

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

JERSEY SHORE UNIVERSITY MEDICAL
CENTER, A DIVISION OF HACKENSACK
MERIDIAN HEALTH
Employer

and

Case 22-RC-263932

HEALTH PROFESSIONALS AND ALLIED
EMPLOYEES, HPAE, AFT/AFL-CIO
Petitioner

ORDER

The Employer's Request for Review of the Regional Director's Decision and Direction of Election is denied as it raises no substantial issues warranting review.¹ The Employer's request for a stay of the election is denied as moot.

¹ In denying review, we note that the Board's decision in *San Diego Gas & Electric*, 325 NLRB 1143, 1145 (1998), recognizes that Board elections should, as a general rule, be conducted manually and specifies well-settled guidelines for determining whether a mail-ballot election would normally be appropriate. But in *San Diego Gas & Electric*, the Board also recognized that "there may be other relevant factors that the Regional Director may consider in making this decision" and that "extraordinary circumstances" could permit a Regional Director to exercise his or her discretion outside of the guidelines set forth in that decision. *Id.*

In finding that a mail-ballot election is warranted in this case, we rely on the extraordinary circumstances resulting from the Covid-19 pandemic. The Board will continue considering whether manual elections should be directed based on the circumstances then prevailing in the Region charged with conducting the election, including the applicability to such a determination of the suggested protocols set forth in GC Memorandum 20-10. Under the circumstances presented in this case, however, we are satisfied that the Regional Director did not abuse his discretion in ordering a mail-ballot election here.

Pursuant to Sec. 102.66(g)(1) of the Board's Rules and Regulations, a hearing officer is required to solicit the parties' positions regarding the type of election "but shall not permit litigation of those issues." This provision is consistent with longstanding Board precedent holding that election details—including the type of election to be held—are nonlitigable matters left to the discretion of the Regional Director. See Representation-Case Procedures, 84 Fed. Reg. 69524, 69544 fn. 82 (Dec. 18, 2019) (citing *Manchester Knitted Fashions, Inc.*, 108 NLRB 1366, 1367 (1954)). As such, there is no merit to the Employer's contention that the Regional Director improperly denied it an opportunity to present evidence on the propriety of a manual election.

MARVIN E. KAPLAN, MEMBER

WILLIAM J. EMANUEL, MEMBER

LAUREN McFERRAN, MEMBER

Dated, Washington, D.C., October 1, 2020.

The Board is open to addressing the normal criteria for mail balloting in a future appropriate proceeding.